Draft to Clerk:

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# MINUTES OF THE REGULAR MEETING BOARD OF ZONING APPEALS October 12, 2006 7:30 P.M. CITY COUNCIL CHAMBERS, 10<sup>TH</sup> FLOOR CITY HALL

### I. ROLL CALL

The meeting was called to order by Chairman Burgess at 7:30 p.m. Chairman Burgess read the BZA introduction. Roll call was taken.

## Present:

B. Burgess E. Horne G. Hilts M. Mayberry A. Frederick

**Absent:** G. Swix B. McGrain F. Lain

Staff: S. Stachowiak

A. A quorum of five members was present, allowing voting action to be taken at the meeting.

#### II APPROVAL OF AGEND

A. Frederick moved, seconded by E. Horne to approve the agenda with the addition of "Excused Absences" under new business.

On a voice vote, the motion carried 5-0.

## III. HEARINGS/ACTION

## A. <u>BZA-3889.06, 1249 Climax Street</u>

This is a variance request by Richard Wilder and Jeanne Lord for a variance from the height requirement for a front yard fence. The applicants have constructed a six (6) foot high, wood privacy fence in their Holmes Street front yard. Section 1292.03(a)(1) of the Zoning Code states that no fence shall exceed a height of three (3) feet within a front yard. Therefore, a variance of three (3) feet to the height limit for a front yard fence is being requested. Staff recommended denial of the request on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Jeanne Lord, 13961 Thornapple Lane, Perry, MI stated that the fence was put in for safety reasons rather than privacy. She said that her two daughters live in the house and they can hear gun shots in the area. Ms. Lord said that this is a dangerous neighborhood with drug houses and people trespassing on their property, even in the daytime. She stated that when they bought the property, the side yard where the fence is was full of trash, which they have since cleaned up.

**Richard Wilder, 13961Thornapple Lane, Perry, MI** stated that there is 40 feet between the intersection and the fence and it does not interfere with traffic. He provided photographs to the Board of the subject fence as well as several others in the area that are in conflict with the ordinance.

**Tyler Lord-Wilder, 1249 Climax Street,** spoke in support of the variance. Ms. Lord-Wilder stated that she lives in the house and there are people constantly coming into her yard, even with the fence. She said that this is a high drug area and the fence is a matter of security.

Mr. Burgess asked Mr. Wilder if he was concerned about people getting in to the fenced back yard and being able to break-in without being seen.

Mr. Wilder stated that it is not easy to climb a six foot fence.

**Mike Jones, 1222 Climax Street,** spoke in opposition to the variance. He said that he has worked with other people in the area to put up fences, in compliance with the ordinance. He stated that there are some fences in the area that are in violation of the Zoning Ordinance and he would not like to see another one. Mr. Jones also said that the fence does diminish views at the street intersection.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Ms. Horne stated that she cannot support this request. She said that front yard fences reduce visibility. She also said that bushes can solve privacy issues a lot better than fences and they are far more aesthetically pleasing. Ms. Horne stated that she is familiar with the type of neighborhood issues that the applicants are experiencing as she has dealt with similar issues in her own neighborhood. She said that the key to dealing with those issues is to organize the neighborhood (neighborhood organization/watch).

Mr. Frederick agreed with Ms. Horne and stated that there are more effective ways of dealing with neighborhood problems than erecting fences. He suggested contacted Code Compliance about trash problems, working with the police department and the other neighbors in the area to form a neighborhood watch and possibly even barring the windows.

E. Horne moved to deny BZA-3889.06, a variance of 3 feet to the height limitation for a front yard fence at 1249 Climax Street on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by A. Frederick.

VOTE	YEA	NAY
Hilts	х	
Mayberry	х	
Horne	х	
Frederick	х	
Burgess	Х	

Motion carried, 5-0, BZA-3889.06, was denied.

## B. BZA-3890.06, 1130 Parkdale

This is a variance request by All Phase Remodeling Inc. for a variance to the front yard setback requirement in the "A" Residential District. The applicant is proposing to construct a covered porch on the front of the house at 1130 Parkdale that would have a front yard setback of 16 feet. Section 1248.07 of the Zoning Code requires a minimum front yard setback of 20 feet in the "A" Residential district. A variance of four (4) feet to the front yard setback requirement is therefore, being requested. Staff recommended approval of the variance request on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application, with the condition that the porch be consistent with the existing house in design, color and materials.

**Lyle Whittake, 1130 Parkdale,** spoke in support of his request. He provided the Board with a picture of the existing porch and a drawing of the proposed porch. He stated that the new porch will be a big improvement to the house.

Mr. Frederick asked about the size of the existing stoop.

Mr. Whittake stated that it is about 4 feet deep. He stated that the new porch will require a permit from MDEQ as this property is in the 100 year floodplain and the steps will be below the base flood elevation.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that the practical difficulty in this case is clear and is described well in the staff report. He stated that the existing porch does not meet setback requirements either.

Mr. Mayberry stated that he agrees with Mr. Frederick and that the proposed porch will be a nice improvement to the home.

M. Mayberry moved to approve BZA-3890.06, a variance of 4 feet to the front yard setback requirement to permit a new covered porch on the front of the house at 1130 Parkdale, on a finding that the variance would not be consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by A. Frederick.

VOTE	YEA	NAY
Mayberry	х	
Hilts	х	
Frederick	х	
Horne	х	

VOTE	YEA	NAY
Burgess	Х	

Motion carried, 5-0, BZA-3890.06, was approved.

## C. BZA-3891.06, 435 N. Sycamore Street

This is a variance request by Sally Chirio. The applicant is proposing to erect a deck over an existing garage at 435 N. Sycamore that was constructed on the side property line and within 1.8 feet of the rear property line. The deck would be connected to an open porch on the upper floor of the house by a proposed overhead walkway. Sections 1256.08 and 1256.09 state that a side yard shall be no less than 10% of the lot width and that a rear yard set back shall be no less the 25 feet, respectively. Variances of 6 feet to the side yard set back and 23.2 feet to the rear yard set back are, therefore, being requested. Staff recommended approval of the variance request on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

**Fred McGlaughlin**, **representing the applicant**, **Sally Chirio**, spoke in support of this request. He stated that he is the architect for this project and he is available for guestions.

- Ms. Horne asked what the deck boards will be made of.
- Mr. McGlaughlin stated that they would be treated wood.
- Mr. Frederick asked if the garage doors would be changed.
- Mr. McGlaughlin stated that the garage doors have already been changed.
- Mr. Frederick asked if Ms. Chirio has thought about screening the patio as the mosquitoes could diminish the enjoyment of the patio.
- Mr. McGlaughlin stated that they had not considered screening.
- Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.
- Mr. Frederick stated that the practical difficulty is very evident in this case given the size of the lot and the setback requirements of the DM-4 zoning district. He also said that the proposal is a unique solution to a unique problem.
- Mr. Hilts agreed saying that this is a creative solution to the problem and will be a nice improvement to the property.

A. Frederick moved to approve BZA-3891.06, a variance of 6 feet to the side yard setback and 23.2 feet to the rear yard setback to permit the construction of an overhead walkway and a patio on the roof of the existing garage at 435 N. Sycamore Street on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application, with the condition that the deck be compatible with the existing house in design, color and materials to the greatest extent possible. Seconded by

# M. Mayberry.

VOTE	YEA	NAY
Hilts	х	
Frederick	х	
Horne	х	
Mayberry	х	
Burgess	Х	

Motion carried, 5-0, BZA-3891.06, was approved.

## D. <u>BZA-3892.06, 1632 Alpha Street</u>

This is a variance request Stephen Rigg for a variance from the height requirement for a front yard fence. The applicant has constructed a six (6) foot high, wood privacy fence in his Pershing Avenue front yard. Section 1292.03(a)(1) of the Zoning Code states that no fence shall exceed a height of three (3) feet within a front yard. Therefore, a variance of three (3) feet to the height limit for a front yard fence is being requested. Staff recommended approval of the variance request on a finding that, although the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), the circumstances in this case are very unique, as detailed in the staff report for this application,

**Stephen Rigg, 1632 Alpha Street,** spoke in support of the variance. He stated that the circumstances are unique in this case as the fence has been in existence for more than 6 years and now that he is ready to sell the house, he finds out that the fence in illegal and has to be changed. He said that the fence would erected in the first place to protect his two young children and altering it would diminish the value of the property and adversely affect his ability to sell the house. Mr. Rigg stated that he never intended to violate the code and had no idea that he had done so until he received a letter from the city recently following another front yard fence situation in his area. He said that the fence does not hinder visibility or anyone's view from their house.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick asked if there was any time limit on enforcement of ordinances.

Ms. Stachowiak stated no.

Mr. Burgess acknowledged the three letters of objection that were received for this case.

Mr. Horne stated that fences should be consistent in neighborhoods and this fence is not consistent with the neighborhood in which it is located. She stated that she cannot support this request.

Mr. Frederick stated that enforcement of front yard fences is inconsistent throughout the city.

He also said that he would not feel comfortable granting a variance without a practical difficulty and there is not one in this case. He said that while he understands the uniqueness of the situation in terms of how this was brought to the city's attention, the criteria that the board must consider is whether there is a practical difficulty in meeting the ordinance that would warrant a variance. He said that there is not a practical difficulty in this case as this is a typical corner lot that has an adequately sized back yard in which to enclose with a privacy fence.

Mr. Hilts agreed with Mr. Frederick stated that without a practical difficulty, the Board does not have the authority to grant a variance.

Mr. Burgess also agreed adding that he has concerns about the enforcement of the front yard fence ordinance.

E. Horne moved to deny BZA-3892.06, a variance of 3 feet to the height limitation for a front yard fence at 1632 Alphas Street, on a finding that the variance would be inconsistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e). Seconded by A. Frederick.

VOTE	YEA	NAY
Hilts	х	
Mayberry	х	
Horne	х	
Frederick	X	
Burgess	Х	

Motion carried, 5-0, BZA-3892.06, was denied.

## VI. OLD BUSINESS

- A. Rules of Procedure No action
- B. BZA-3817.04, 1014 S. Pennsylvania Avenue No action

## VII. PUBLIC COMMENT

**Mike Jones, 1222 Climax Street** stated that the problem with enforcement, particularly fences, is that the neighbors have to report the violations. He said that there is not adequate enforcement.

## VIII. APPROVAL OF MINUTES

- A. Minutes of Regular Meeting held September 14, 2006
  - A. Frederick moved, seconded by G. Hilts to approve the minutes of September 14,

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2006, as printed. On a voice vote, the motion carried unanimously, 5-0.

# IX. <u>NEW BUSINESS</u>

## A. Excused Absences

A. Frederick moved, seconded by E. Horne to grant an excused absence to F. Lain for the October 12, 2006 meeting. On a voice vote, the motion carried unanimously, 5-0.

The board members asked Ms. Stachowiak to contact Mr. Swix since he has missed a couple of meetings.

# X. ADJOURNMENT AT 8:30 p.m.

Respectfully submitted,	
Susan Stachowiak, Zoning Administrator	-